

December 15, 2000

**Extension of the Cooperative Agreement
for Platte River Research and Other Efforts Relating
to Endangered Species Habitats Along the Central
Platte River, Nebraska**

Committee recommendation: The Governance Committee should take action to extend the Cooperative Agreement from December 31, 2000 to June 30, 2003 and to adopt new milestones for that time period, all as outlined in the attached paper.

Committee members:
Dayle Williamson, Chair
Vernon Nelson
Rhodell Jameson
Paul Tebbel
John Lawson
Jerry Vandersnick
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Mark Butler
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Clayton Derby, staff

Extension of the Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska

Background: A Cooperative Agreement outlining a proposed basinwide program was signed on July 1, 1997 by Colorado Governor Roy Romer, Nebraska Governor Ben Nelson, Wyoming Governor Jim Geringer, and Secretary of the Interior Bruce Babbitt. The Cooperative Agreement specified the activities that were to be undertaken in a three-year period while a proposed program was being reviewed under the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA).

Current Situation: The ten member governing body (the Governance Committee) has made a diligent effort to complete all required activities and develop a "proposed program" during the three-year time period originally established to complete the work. As provided for in the original Cooperative Agreement, action by the Governance Committee on February 24, 2000 extended the completion time from June 30, 2000 until December 31, 2000. In view of a very complex set of issues, a number of the original milestones set out for program recommendations have not been completed, and several new tasks that require future milestones have been identified. In addition, Department of the Interior agencies have discovered issues that have caused delays in the work they must perform to prepare an environmental impact statement (EIS) and biological opinion (BO).

Extension Considerations: In view of the current situation, the Governance Committee approves an additional extension of the Cooperative Agreement until June 30, 2003. That additional time period will allow for the completion of both existing and new milestones necessary to establish a Program and to complete the EIS. Additional guidance is given concerning continued funding during the extension period. The status of the current milestones that need completion as well as new milestones that must be considered are also identified as is a recommended procedure to follow to finalize such an extension. The remainder of this paper will discuss those items in order.

Funding: The goal is to work within existing funds available for the costs of the Cooperative Agreement. This goal does not address any costs relating directly to the preparation of the EIS. Through August of 2000, Governance Committee expenditures have totaled approximately \$834,000. The best estimate at this point for the "close out" expenditure by December 31, 2000 is \$974,000. This amount deducted from the original funding set aside for Governance Committee activity leaves approximately \$2.8 M available for continued funding of the Cooperative Agreement.

The \$2.8 M does not take into account the budgeted amounts for the sub committees that have not been expended. Considering those future expenditures, a reserve of \$2.2 M is the amount that would be available from the current funding for an extension of the Cooperative Agreement.

Milestones for the Extension Period

Many of the milestones for the Cooperative Agreement have been completed and the products are ready to be made part of the documents describing the proposed program. However, for a number of reasons, some milestones have not been completed. A table summarizing the status of the original milestones and the estimated percentage of completion of each of those milestones is attached hereto as Attachment #1. All original milestones need to be completed within the timeframe outlined in Table 1, except as they are modified by the new milestones which appear hereinafter. If an original milestone is not identified in Table 1, the date for completion is assumed to be the end of the extension period.

Table 1. Original milestones and subtasks and completion dates.

Milestone and Subtask	Date for Completion
R1-1 (Baseline)	July 1, 2001
R2-1, R3-1, R1-2, R1-3 (M&R/Protocols) Agreement on monitoring categories (what is to be monitored vs. available funding)	May 1, 2001
W3-1, W3-2, W2-3 (Program water protection in NE)	October 1, 2002
W4-1, W4-2, W3-3 (Nebraska Future Depletion Plan); Identify types of projects covered and analysis of potential effects of plans on pulse flows	Refer to Extension Milestones below.
W8-1 (Colorado Accretion/Depletion); Analysis of potential effects of plans on pulse flows	Refer to Extension Milestones below.
W11-1, W8-2, W8-3 (Colorado North Platte Future Depletion Plan); Identify types of projects covered and analysis of potential effects of plans on pulse flows	Refer to Extension Milestones below.
W13-1, W10-2, W10-3 (Wyoming Future Depletion Plan); Identify types of projects covered and analysis of potential effects of plans on pulse flows	Refer to Extension Milestones below.
P3-1 (First Increment Milestones)	September 1, 2001
Milestones related to EIS/BO/ROD	Refer to Extension Milestones below.

The work completed during the Cooperative Agreement thus far has demonstrated the need and/or opportunity for additional milestones as described by category in the material, which follows.

New Milestones Relating to Administration

A1-EXT. The Governance Committee will reach agreement on the cost of the Cooperative Agreement extension and future program. The Governance Committee will agree on an

allocation of committee budgets for the term of the Cooperative Agreement extension by May 1, 2001. The Governance Committee will develop an estimate of budget/cost issues for the program by July 1, 2002.

A2-EXT. The Governance Committee will review and refine all milestones as necessary on a quarterly basis.

A3-EXT. The Governance Committee will work with the U.S. Fish and Wildlife Service (FWS) to identify what components of the Platte River under the existing proposed Program or other NEPA/ESA alternatives are considered to pose a jeopardy condition to the target species, and the scientific rationale for such determination by March 1, 2001.

New Research and Monitoring Milestones

R1-EXT. The Technical Committee will initiate monitoring and research as necessary to supplement data and information gaps in the baseline and to evaluate the effects of Environmental Account releases necessary to compare against future changes/improvements in habitat and species status. Monitoring protocols will be initiated in March 2001.

R1a-EXT. The Governance Committee and the FWS will develop a schedule and implement a plan for obtaining data to determine if changes in flow conditions in the central Platte will affect flows in the lower Platte. If changes can be detected then an assessment of the magnitude of the changes will be completed and a determination will be made regarding the potential for these changes to provide measurable benefits to pallid sturgeon habitat.

R2-EXT. The Technical Committee will continue to implement the Cottonwood Ranch property demonstration project begun in year three of the Cooperative Agreement and any other demonstration projects begun during the extension period.

R3-EXT. The Technical Committee will continue to revise and update peer review schedules and topics in the Peer Review Work Plan. Peer review will be done using the Scientific Peer Review Guidelines established by the Technical Committee under milestone R4-1 and approved by the Governance Committee. The Peer Review Work Plan for the Program will be developed by July 31, 2002.

R4-EXT. The Nebraska districts will continue to implement any research and monitoring measures required by new FERC license articles for FERC projects numbers 1417 and 1835.

New Milestones for Land Measures

L1-EXT. The Land Committee working with the Technical Committee will review and provide recommendations to the Governance Committee for action on the Habitat Protection Plan by May 15, 2001.

L2-EXT. The Land Committee, in conjunction with the Executive Director, will develop and implement a means for tracking lands offered to the program by interested landowners by March 31, 2001.

L3-EXT. The Governance Committee will reach agreement on the land policy consistent with the purposes of the Cooperative Agreement by May 1, 2001.

L4-EXT. The Governance Committee working through the Land and Technical Committees will identify the approach for contracting with a land holding entity or entities and associated policy and procedures that will govern the entity or entities during the First Increment for the Program's Land Component by the end of the Cooperative Agreement extension.

L5-EXT. The Governance Committee (or Technical or Land Committee if so designated) per the Agreement in Principle dated June 30, 1997 will develop an approval and funding mechanism to provide maintenance plans and dollars needed during the Cooperative Agreement for the Cottonwood Ranch Property by December 31, 2002.

L6-EXT. The Governance Committee will adopt a "Land Action Plan" developed pursuant to milestones L2-1, L2-3, L4-1, L5-1, L3-2, and L1, L3, L4 and L5-EXT by December 31, 2002.

New Milestones for Water Measures

W1-EXT. By July 1, 2002 Nebraska will complete preparation of its plan to mitigate, offset for, or prevent any new depletions to target flows if a program is initiated and will do in accordance with the more detailed schedule outlined in Attachment #2. By May 1, 2001, Nebraska will work with the FWS to identify what types of water related activities will be covered and Nebraska will determine what will be covered by its plan for new depletions. By May 1, 2001, the Department of the Interior and Nebraska will together conduct an analysis of potential effects the plan may have on pulse flow frequency and magnitude.

W2-EXT. By July 1, 2002 Wyoming will complete preparation of its plan to mitigate, offset for, or prevent any new depletions to target flows if a program is initiated and will do in accordance with the more detailed schedule outlined in Attachment #3. By May 1, 2001, Wyoming will work with the FWS to identify what types of water related activities will be covered and Wyoming will determine what will be covered by its plan for new depletions. By May 1, 2001, the Department of the Interior and Wyoming will together conduct an analysis of potential effects the plan may have on pulse flow frequency and magnitude.

W3-EXT. By July 1, 2002 Colorado will complete preparation of its plan to mitigate, offset for, or prevent any new depletions to target flows in the North Platte River basin within Colorado if a program is initiated.

W4-EXT. Colorado will meet the following milestones: a) By May 1, 2001, the Department of the Interior and Colorado will together conduct an analysis of potential effects that the Tamarack Plan Phase II may have on pulse flow frequency and magnitude; b) By May 1, 2001, Colorado will clarify for the Fish and Wildlife Service the types of water related activities covered by its South Platte and North Platte plans for new depletions; c) By December 31, 2001, Colorado will

submit to the Governance Committee the first annual information report, as described in Paragraph D of Tab 3B, Appendix A of the Proposed Platte River Recovery Implementation Program, estimating population increases in each of the three regions, and describing water sources used to supply new water related activities including type of water source, works used and quantities supplied. d) By July 1, 2002 Colorado will submit to the Governance Committee the five-year Subsequent Reporting Period report described in Paragraph D of Tab 3B, Appendix A of the Proposed Platte River Recovery Implementation Program.

W5-EXT. Nebraska will expand its daily river accounting procedures to include the South Platte River downstream from the Colorado-Nebraska state line and provide any necessary information regarding those procedures to the Water Management Committee by the end of the Cooperative Agreement extension.

W6-EXT. Colorado will (1) for Tamarack Phase III, develop a reporting and accounting procedure to enable the reregulation of activities of specific Tamarack Plan participants and the total contributions for Phase III to be tracked over time; (2) for Phases I, II, and III, develop operational criteria to guide implementation; and (3) develop South Platte River gain/loss values for use by the Program on the South Platte River in Colorado. This milestone will be completed following resolution of the issues relating to W1-EXT through W5-EXT. Sufficient detail on the daily operating criteria for Phase I will be provided to judge anticipated yield/benefit by May 1, 2001.

W7-EXT. Colorado and Nebraska will develop a process and schedule for Colorado, Nebraska, and/or a third party to seek the necessary appropriations under Nebraska water law for the recognition and protection of Tamarack water in Nebraska. The application and/or appropriation would address issues such as the quantification of "new" water to be protected, intended/permitted uses of the Tamarack water in Nebraska, and mechanisms necessary for the Tamarack water to be "exchanged" into the Environmental Account in Lake McConaughy. Sufficient detail to judge the likely amount of water from Tamarack Phase I being "exchanged" into the McConaughy Environmental Account will be provided by September 1, 2001.

W8-EXT. The Water Management Committee will develop for Governance Committee approval a monthly reporting format (perhaps web-based) that details the total streamflow and Program water at key gauge locations by the end of the Cooperative Agreement extension.

W9-EXT. The FWS will work with the U.S. Forest Service (USFS) and the states to develop a new depletion plan for USFS lands in the Platte River Basin. This will include establishing a baseline against which the impacts, including channel stability, of past and future vegetation management will be measured. By September 1, 2001, the FWS and/or USFS will work with the states to identify what types of water related activities will be covered and the FWS and/or USFS will determine what will be covered by the plan for new depletions. By September 1, 2001, the FWS and/or USFS will conduct an analysis of potential effects the plan may have on pulse flow frequency and magnitude.

W10-EXT. The FWS will work with the states and the Corps of Engineers, the Bureau of Reclamation, the Natural Resources Conservation Service, the Bureau of Land Management and

any other federal agencies whose operations may result in a depletion to the Platte River or its tributaries to develop such methods as are necessary to address new depletions caused by federal activities not encompassed by state new depletion plans. For projects not covered by state plans, the FWS and appropriate federal agencies will conduct an analysis of potential effects of these plans on pulse flow frequency and magnitude by September 1, 2001.

W11-EXT. By July 1, 2002 the FWS and appropriate federal agencies will complete preparation of their plan(s) to mitigate, offset for, or prevent any new depletions to target flows from federal projects not covered by state depletion plans if a program is initiated.

W12-EXT. The Water Management Committee will review products submitted in accordance with the Milestones listed above and will assist in resolving any issues that arise from such review.

New Milestone Relating to Channel Stability

C1-EXT. The Department of the Interior will deliver to the Governance Committee quantitative data, modeling assumptions, input, etc. on the sediment-vegetation model by January 31, 2001.

C2-EXT. The Governance Committee will reach agreement on the need for any program measures to address channel stability, sand transport, and environmental account pulse flow operations and, to the extent agreement is reached on the need, specific measures relating to that agreement will be proposed as part of the Program.

C2a.EXT. States Consultant selected by February 15, 2001. Governance Committee will continue reviewing the sediment issue.

C2b.EXT. Phase I – Analysis of Existing Channel Stability and Sed/Veg model information by August 15, 2001

C2c.EXT. Peer review of Phase I report to coincide with the NEPA/ESA analysis of the report by September 1, 2001

C2d.EXT. Phase II – Identification of potential solutions (may or may not be needed) by September 1, 2001. The potential solution will be evaluated through monitoring and research during the Program

C2e.EXT. Peer review of Phase II report (if needed) by December 31, 2001

C2f.EXT. Agreement on Program responsibilities by September 1, 2001

NEPA/ESA Schedule

Begin printing the draft EIS by January 31, 2002

Begin printing the draft Biological Opinion by February 15, 2002

Distribute the draft EIS by February 28, 2002

Distribute the draft BO by March 15, 2002

Comment period from March 15 – July 1, 2002

Negotiations if preferred alternative different from proposed Program by August 15, 2002

Final EIS/BO/ROD by December 31, 2002

The above NEPA/ESA schedule allows for states to have the final EIS and ROD for their respective 2003 legislative sessions by January 1, 2003. The Cooperative Agreement to implement a Program would be signed by June 30, 2003. If required, the Governance Committee may extend the Cooperative Agreement for six additional months.

Attachments:

1. Table showing status of original milestones
2. New Depletion Preparation and Implementation Schedule for Nebraska
3. New Depletion Preparation and Implementation Schedule for Wyoming
4. The proposed budget
5. Draft motion for the GC
6. Draft individual letters for the signatories

Attachment 2 - Schedule for completion and implementation of Nebraska's New Depletion Plan (11/1/00)

July 1, 2001 – Finish initial preparation of COHYST models.

September 1, 2001 – State to begin land use inventory for 2001 to compare irrigated acres with 1997.

January 1, 2002 – Provide background and information on COHYST and on status of the new depletion plan to the Water Management Committee. WMC will conceptually agree with plan.

July 1, 2002 – State to identify amount and timing of offset water needed because of new depletions begun between 7-1-1997 and 12-31-2001.

July 1, 2002 – Details of new depletion plan to be finalized and plan submitted to Governance Committee for review and approval.

December 31, 2002 – Decision is made by all three states and the Department of the Interior to implement a Platte River Program.

January 1, 2003 – Introduce legislation needed to implement plan and to fund related costs.

June 1, 2003 – NRDs designate groundwater management areas and adopt regulations to be applied in hydrologically connected zones; those regulations will require offsets for the depletion effects of wells put into service before 1-1-2004 and of expanded use of existing wells if the expansion occurs on or after that date.

July 1, 2003 – NRDs and DNR begin conditioning permits to require offset for use begun on or after 1-1-2004.

September 1, 2003 – State to begin land use inventory for 2003 to compare irrigated acres with 2001.

December 31, 2003 – State to put into place measures necessary to offset depletions to “program flows” for new uses begun 7-1-97 to 12-31-2001.

January 1, 2004 – Permits issued for new wells and expanded use of existing wells in hydrologically connected zones issued only if applicant has provided sufficient assurance of offset water.

July 1, 2004 – State to identify amount and timing of offset needed because of new depletions begun between 1-1-2002 and 12-31-2003.

December 31, 2005 – State to put into place measures necessary to offset depletions to target flows because of new uses begun between 1-1-2002 and 12-31-2003.

Attachment 3 - Schedule for completion and implementation of Wyoming's New Depletion Plan

January 1, 2002 - Provide methodology and background information on Wyoming's Depletion Plan to the Water Management Committee. WMC will conceptually agree with plan.

April 1, 2002 - Wyoming's New Depletion Plan to be approved by the Water Management Committee.

July 1, 2002 - Wyoming will identify amount of water and timing of offset water needed because of new depletions beginning as of July 1, 1997 and will condition permits to require offsets for depletions to the North Platte Basin for use begun on or after July 1, 1997.

July 1, 2002 - Details of Wyoming's New Depletion Plan to be finalized and the Plan submitted to the Governance Committee for review and approval.

July 1, 2002 - Wyoming to begin inventory of irrigated acreage.

December 31, 2002 - Decision is made by all three states and the Department of the Interior to Implement a Platte River Recovery Program.

January 1, 2003 - Introduce legislation to implement plan and provide funding.

June 1, 2003 - Wyoming will designate groundwater management areas for those areas deemed to be hydrologically connected to the North Platte River and its tributaries. Regulations which require offsets to mitigate surface water depletions to the basin will be developed and implemented for those groundwater wells developed on or after July 1, 1997.

December 31, 2003 - Wyoming to put into place measures necessary to offset depletions for new uses begun on or after July 1, 1997.

January 1, 2004 - Permits issued for new wells and expanded use of existing wells in hydrologically connected zones issued only if applicant has provided sufficient assurance of offset water.

July 1, 2007 - Wyoming will re-inventory irrigated acreage in the North Platte Basin.

Attachment 4. The proposed budget

Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska Estimated Extension Budget					
			1/1-12/31/01	1/1-12/31/02	1/1-6/30/03
	Estimated Budget Per Yr		Total	Total	Total
Executive Director	\$270,000		\$270,000	\$270,000	\$135,000
Land Committee					
Clerical Support	\$12,000				
Travel Reimbursement	\$2,000				
Total LC Budget			\$14,000	\$14,000	\$7,000
Water Management Committee					
Miscellaneous	\$5,000				
Assistance to Develop Demo Projects	\$3,500				
Total WMC Budget			\$8,500	\$8,500	\$4,250
Water Action Plan Committee					
Additional Studies	\$20,000				
Total WAPC Budget			\$20,000	\$20,000	\$10,000
Technical Committee					
Protocols for Monitoring and Research	\$100,000				
Demonstration Project: Cottonwood Ranch	\$100,000				
Peer Review (Protocols, IMRP, etc.)	\$15,000				
Total TC Budget			\$215,000	\$215,000	\$157,500
Outreach Committee					
Miscellaneous	\$30,000				
Total OC Budget			\$30,000	\$30,000	\$15,000
Finance Committee					
Nebraska Community Foundation	\$25,000				
Total FC Budget			\$25,000	\$25,000	\$12,500
TOTAL BUDGET			\$582,500	\$582,500	\$341,250

Attachment 5 - Draft motion for GC

See page 10, item B in Section 1 of the Cooperative Agreement on voting on issues of significance. (requires 9 affirmative votes of the members. If a member and alternate are absent from the meeting or abstain from voting, the voting requirements will be reduced accordingly.

*I move to accept the report and recommendations of the ad hoc CA Extension Committee to extend the term of the **Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska** from December 31, 2000 until June 30, 2003. Furthermore, this action includes acknowledgement of timelines for the completion of current milestones, the addition and acceptance of new milestones, and, for purposes of state obligations, no increase in the budget set-aside in Table 1, Appendix B of the original agreement for the term of the Cooperative Agreement. I request a roll call vote.*

Attachment 6 - Suggested draft letter for the four signatories

A copy of the GC action from the December 15, 2000 meeting would be made available to each of the four signatories along with the draft letter. The ad hoc Cooperative Extension Committee Report could also be made available to them.

Dear Mr. Ament:

I have reviewed the action taken on December 15, 2000 by the Governance Committee that has responsibility to carry out the work on the **Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska** and concur with the extension of the Agreement from December 31, 2000 to June 30, 2003.

Sincerely,